IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-937

JOAN TAYLOR,
Petitioner,

vs.

EDWARD SIMMONS, D.D.S.,
MEIGS JONES, D.D.S.,
MEIGS JONES, JR., D.D.S.,
Respondents.

JOAN TAYLOR,
Petitioner,

vs.

JOHN C. CARNES, D.D.S.,
Respondent..

PETITION FOR A WRIT OF CERIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Joan Taylor, as
propria persona
455 South Irving Blvd.
Los Angeles, CA 90020

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Above-named petitioner respectfully prays that a writ of certiorari issue to review order decisions of the United States Court of Appeals for the Tenth Circuit, entered in proceedings July 17 and September 11, 1978.

OPINIONS BELOW

A slip opinion "Not to be routinely publishe", entered July 19, 1978, by the Tenth Circuit Court of Appeals, is attached, as Exhibit "A". Opinion of the Tenth Circuit Court of Appeals for September 11, 1978, denying petition for rehearing, as writ of mandate, is attached, as Exhibit "B".

JURISDICTION

The two orders of Court of Appeals for the Tenth Circuit include a "Not to be routinely published" slip opinion July 17, 1978. A second order, for September 11, 1978, denied a petition for rehearing, en banc, as writ of the mandate by appellant-petitioner.

This petition for writ of certiorari was filed within 90 days of final order from the Tenth Circuit Court of Appeals, The Court's jurisdiction is invoked under # 28 U.S.C.A. 1332(c); United States Constitutional Amendment 7; and federal rules of civil procedure Rules 60(b1,36, under # 28 U.S.C.A.

Order decisions of September 11 and July 17, 1978 in appeals 77-1557 and

77-1558 affirmed summary judgments for federal rules of civil procedure Rule 56(b) motions by dentists; and denials of Rules 59 and 60(b)1,3,6 motions to vacate judgment by plaintiff and her attorneys; with orders January 10 (filed April 26 by dentists), May 9, June 28, and August 8, 1978.

This statement is submitted to show the Supreme Court of the United States has jurisdiction; substantial questions are: plaintiff right to jury trials in national precedent claims for occlusion of teeth and jaw relation to skull; plaintiff's financial bankruptcy by catastrophic health costs and errors herein; and Kansas attorney Stratton use of known-fraudulent motion on Kansas court, and his use of known-perjured affidavit by client dentist, Carnes, to falsely swear "Plaintiff stole all legal proofs in 1973" when proofs on record later showed lawyer and dentist possessed legal proofs at all times; and fraud involved proofs of one million, two hundred thousand ($1,200,000.00) dollars, in two dental claims to make national case law.

The Complaint for relief in Case 1 appeal 77-1558, Taylor V. Simmons, D.D.S., Meigs Jones, D.D.S., and Meigs Jones Jr, D.D.S. was filed August 7, 1973 in Topeka, Kansas federal district court, by diversity of plaintiff's Missouri, and dentists' Kansas residencies. The eight hundred thousand ($800,000.00) dollar suit avers permanent injuries, facial paralysis of educated, attractive woman completing doctoral degree, an Ed.D., in university urban administration.

From August 1973 to May 1975, three Kansas lawyers, paid three thousand ($3,000.00) dollars by plaintiff, stole, did not file motions, and lost motions for x-rays. In 1975, plaintiff ended first law courses. Dentists' attorney, in bad faith, refused her x-rays, legal proofs and insurance policies.

The Complaint for relief in Case 2, appeal 77-1557, Taylor v. Carnes, D.D.S., was filed for four hundred thousand ($400,000.00) dollars, by dental injury, in Topeka, Kansas federal district court, for California plaintiff now resident, by Attorney Hausheer. He "lost" motions for legal proofs, Case 1, April 1975; and left this suit.

From June 1975 to 1977, plaintiff was massively maimed, by continual crime linked to this litigation by three (3) investigators, on court record. Judges ignored crime to her.

December 1975, District Judge Rogers, new insurance lawyer on bench, dismissed Case 1, after full order compliance by plaintiff in filing witness and exhibits lists to prevent dismissal. Plaintiff reinstated suit March 29, 1976 hearing.

March to December 1976, Magistrate Sullivant, new insurance lawyer on bench, in bias, refused plaintiff legal proofs, by order terms. He denied her motions to produce and compel insurance policies, legal proofs, university evaluation of proofs, and interrogatories admitted relevant by dentists. The fifteen hundred (1,500) pages, interrogatories, saved deposing and plaintiff attorney time.

District Judge Rogers refused to review Magistrate orders. By plaintiff request, Rogers recused November 22, 1978.

November 13, 1976, dentists' Kansas attorney Wayne Stratton filed known-fraudulent motion "to produce record from plaintiff" .. "based on accompanying" known-perjured affidavit by client, dentist Carnes defendant who falsely swore "Plaintiff in 1973 stole all x-rays, casts, notes, from me.."

December 26, 1976, plaintiff moved for summary judgments, charging and proving Kansas lawyer Stratton's known-fraudulent motion on courts and his use of known-perjured affidavit of client, dentist Carnes (See above, November 13, 1976). Motion exhibits proved lawyer frauds, perjury on court:

a. Attorney Stratton's April 16, 1975 letter to "list and enclose" all legal proofs claimed "stolen in 1973 by plaintiff".
b. Dentist Carnes' February 28, 1974 letter to plaintiff's attorney Levy to sell copies of legal proofs for one thousand ($1,000.00) dollars.
c. Attorney Hausheer affidavit to swear he received in 1975 all legal proofs "listed and enclosed" by Attorney Stratton 1975 (see a), two years after claimed "theft".

Dentists did not answer plaintiff summary motions, thus admitted truth of attorney frauds on court, yet judge denied plaintiff motion January 10, 1977, a few days after judicial entry.

On February 9, 1977, president of Kansas City, Kansas Bar law firm entered for plaintiff, to plead woman's work 1976 was "salient", "judicial errors existed", and "criminal harassment 1976-7 harmed plaintiff", with her injury witness offer by Dr. James Privitera, M.D., treating woman, Covina, California; investigator Sonnenberg affidavit and reports of criminal harassment for woman in Kansas, Missouri and California; and dental witness for plaintiff, dentist-attorney Norman Ascherman, D.D.S.-J.D., San Francisco, California letter, witness offer, and writing: "(Plaintiff) claim has merit..."

On May 9, 1977, Judge Templar denied the woman's dental witness and record words of defendants' malpractice and allowed to remain judgment against woman that "no issues of material fact exist," an error to maintain summary judgment.

Error continued in denial of plaintiff twenty-four (24) motions in past six (6) months 1976, and relevant interrogatories, as ongoing work of cuunsel (pro se) 1976 on May 9, 1977; and June 28, 1977 motion by plaintiff fore reconsideration, denied by Judge Templar.

On August 8, 1977, Judge Templar ruled on plaintiff's Rule 60(b)3 motion submitted May 1977, charging dentists' attorney continued frauds on court by April 25, 1977 exhibits.

Plaintiff issued timely notices of appeal to Tenth Circuit on suits.

July 1977, recused Judge Rogers re-entered suits, ordered plaintiff pay one thousand, eight hundred ($1,800.00) dollars for two appeals, but Tenth Circuit overruled.

By December 1977, parties filed memorandum briefs, with no oral argument, by Tenth Circuit order.

July 1978, plaintff wrote for Tenth Circuit ruling. The Tenth Circuit affirmed distric judge's denial of plaintiff and her attorney Rule 59 and 60(b)1,3,6 motions, despite dental witness and medical witness for her.

The Tenth Circuit July 17, 1978 affirmed by "NOT TO BE ROUTINELY PUBLISHED" slip opinion, by three judges, as dicta.

The Tenth Circuit, September 11, 1978 affirmed district by treating appellants Petition for Rehearing as Writ of Mandate, denied.

From those rulings and final order September 11, 1978, petitioner asks writ of certiorari, and remand to district for discovery and trial in dental suits of national case law and catastrophic health costs.

QUESTIONS PRESENTED

1. Is it function of the court of Appeals to affirm district discretion in dismissal for "failure to prosecute" when plaintiff placed in court record the last six months: twenty-four (24) motions to produce and compel all legal proofs of two dental suits, with proofs of university verification, and insurance policies of four dentists; venue change to site of two torfeasers' acts; lengthy interrogatories admitted relevant by four dentists; two motions for summary judgments; and answers to defendants' motions? Was district within discretion?

2. Is it function of the court of Appeals to remand to district when plaintiff's summary judgment motions were not answered by dentists' attorney; and plaintiff motions charged and proved attorney's known frauds on court; his use of known-fraudulent motion on court based on known-perjured affidavit of his client, dentist Carnes who, after months of litigation, suddenly swore "plaintiff in 1973 stole all legal proofs" of two dental claims for one million, two hundred thousand ($1,200,000.00) dollars? Was district within discretion?

3. Is it function of the court of Appeals to affirm district discretion to maintain by January 10, 1977 order words: "..no issues of material fact exist.." when president of Kansas City Kansas Bar law firm for plaintiff, praises her work as "salient" and places on court record letter by dentist-attorney Norman Ascherman, D.D.S.-J.D., of witness for plaintiff, as "..her claim has merit.."; and record has

had head x-rays, as res ipsa loquitur dental injury by broken, mutilated jaws, with parts removed and tooth remains in gross malocclusion of dental crowns and cuts; and record had words of three dentists to cite malpractice herein? Was district discretion maintained?

4. Is it function of the court of Appeals to maintain summary judgment for dentists, within discretion, to weigh and sift the evidence in judicial words of order denying motion to vacate May 9, 1977: "..Plaintiff has no provable case..." after plaintiff's witness offer by dentist-attorney Norman Ascherman, and his written words on record that "her claim has merit"? Was district discretion held?

5. Is it function of the court of appeals, in time of catastrophic health markets, costs to bankrupt plaintiff woman alone, indebt her thirty thousand ($30,000.00) dollars in 1978 and face twenty thousand to fifty thousand ($20,000.00 to $50,000.00) dollars cost to regain partial health with no insurance, and prevent her former professional employment; and allow a district judgment to make plaintiff pay dentists' costs after their admitted frauds on court, and to deny plaintiff jury trial and tortfeaser evaluation to pay for their injury to woman? Was district discretion here?

6. Is it function of the court of appeals to approve district discretion in refusal to vacate judgment for dentists in "failure to prosecute" when dentist told plaintiff dental injury, as witness offer; physician-internist told her injury by radiation toxicities in bone, blood; investigators told her criminal harm; and Bar president asked discovery for trial?

STATEMENT

1. Proceedings in the Trial Court
(Two dental claims)

The Complaint for relief in Case 1, appeal 77-1558, Taylor v. Simmons, D.D.S. Meigs Jones, D.D.S., and Meigs Jones Jr, D.D.S., an eight hundred thousand ($800,000.00) dollar claim, was filed August 7, 1973 in Topeka, Kansas federal district court by Attorney Fred Phelps for plaintiff, Missouri resident suing Kansas dentists, under diversity of citizenry. Suit avers permanent injuries, facial paralysis of educated, attractive woman completing academic doctoral degree, an Ed.D. in university urban administration.

Suit was timely filed with two-year Statute of Limitations for Kansas, site of tortfeasers acts, dating from November 1971 dental treatments by first defendant dentist.

a. Dental treatments: Ed Simmons

On November 17, 1971, plaintiff came from Florida doctoral study to Kansas to allow dentist replace one of four "cosmetic" crowns he placed in 1965. Dentist did not inform his prior negligent work in 1965, to create two abcesses, bone loss unknown to attractive woman, and dental harm by needless extraction, with occlusal injury. Dentist, in fraud with financial gain, agreed, then refused crown replaced, but "sold" new, defective, admitted unsafe two hundred and fifty ($250.00) dollar crown, after past nine hundred ($900.00) dollar harm, and 1972 bill for one thousand ($1,000.00) dollars.

Dentist Simmons enticed woman return for "safe" work; not informing his 1965 defective four-tooth bridge by needless extraction of posterior tooth. Bridge, seldom seen, caused bone loss to destroy prior centric healthful occlusion and jaw relation to skull for plaintiff.

Plaintiff, by selective friendships and social strata, did not know dental frauds and abuse. Intellectually keen, she relied on dental "expertise" in field alien to her, from past health of youthful, vibrant, forty years.

December 1971 and January 1972, dentist defrauded, "sold 'cosmetic' crowns" for fillings, minor blemishes, if that, for posterior teeth. Woman's highly-attractive facial appearance was her employment, social and personal life factor; teeth and bones of jaws mean speech, breathing, swallowing, facial bone support and upper body health.

Work resulted in dentist's butchering down to half lengths the woman's teeth, a body tissue. Dentist placed chin in gross, painful malocclusion. The extreme malpractice forced woman to crown all teeth, to regain lengths, facial bone support, chin balance in skull, on spine.

Dentist did not inform bone loss, a legal factor, with malocclusion and body tissue loss, nor past harm to occlusion, the essence of dental proficiency.

b. Dental treatments: Meigs Jones

Plaintiff, after severe malpractic by Salina, Kansas dentist Simmons, went to

dental authority Meigs Jones, Kansas City, Missouri. Jones' usual price for this care was above ten thousand ($10,000.00) dollars, but he agreed an above four thousand ($4,000.00) range, to restore twenty-two (22) teeth lengths and widths, after Simmons' dental injury to woman. Jones told his many dental honors, world lecturer status. Work began April, to end May 1972.

Jones replaced Simmons' defective crowns on posterior teeth with plastic "temporaries" to extend length, for lower jaw teeth. Jones informed galvanic injury by Sommons' crown metal, poor construction and fit. Jones told import of posterior teeth length to hold chin properly in skull, support face bones. Plaintiff paid five hundred ($500.00), her volition.

Jones defrauded and injured, after plaintiff asked of Simmons' defective crowns. Jones' batteries, in frauds of "cleaning teeth", drilled away more than half the roots of all teeth, cut out part of the chin, to let teeth stumps meet, cut to gumline for posterior teeth. His crowns gave gross, painful malocclusion, bone-destructive, by dental "authority". He did work in fraud as "witness", but abandoned, by handwritten letter a year later, and refused Attorney Grissinger aid, as agreed.

c. Dental treatment: Meigs Jones Jr

In April 1972, Meigs Jones Jr was told by his father to perform two (2) root canals, to drain abcesses and bone

loss for plaintiff. Jones Jr pushed silver point past root into bone. Within a year, endodontist removed, for two hundred and seventy-five ($275.00) dollars. Tooth may be lost; it balances all right side facial bone; and supports.

d. Dental treatment: John Carnes

February 1973, John Carnes, Topeka, Kansas dentist agreed witness of Jones' and Simmons' harm to plaintiff. Carns wrote of Jones' malpractice, "massive reduction" of teeth and jaw relation to attorney. In September 1973, John Carnes agreed, but defrauded on contract to restore teeth lengths and width to full, centric occlusion and health. Carnes then removed all temporary support from posterior lower jaw teeth and drilled down certain upper teeth length. He did not inform bone loss, much injury, and abandoned. September 28, 1973.

e. Dental injury: non-defendant

February 1974, Arizona dentist, named by foremost Kansas City plaintiff attorney, defrauded as witness; he facially paralyzed plaintiff from expression and smile. He placed lower jaw crowns which fell out in days, months later. He had cut out more of the chin, in batteries. He sued and won default, by judge near medical retirement, aided by legal malpractices for plaintiff's Kansas and Arizona lawyers. This massive dental injury was accomplished in two (2) short work spans,

f. Plaintiff after injury

From 1972 to 1975, plaintiff found dentists in Kansas, Colorado, Missouri, Arizona, Pennsylvania, Minnesota, New York and California refused her correct care after dental peer injury. In 1975, Stanford plastic surgeons agreed to rebuild her facial bones, but dentists would not add teeth lengths and widths drilled and cut away a few months prior, by dental peers, a dental monopoly of the occlusion.

g. Plaintiff suit progress 1973-5

From August 1973 to May 1975, three Kansas lawyers, paid three thousand ($3,000.00) dollars by plaintiff, stole her contract (Phelps); did not place one motion in six (6) months February to August 1974 (J Levy, Wichita); and defrauded. For six months, third attorney Hausheer stole dental record copy from file, "signaled" defense attorney, moved for only two (2) of sixty (60) dental x-rays from three (3) dentists in eight hundred thousand ($800,000.00) suit. Hausheer "lost" motions for legal proofs and left, April 1975.

Plaintiff prosecuted. She deposed eight (8) hours January 1975; three (3) hours April 1976. She wired forty (40) of forty-three (43) Pretrial charges for Hausheer, January 1975. She prodded Hausheer to file Case 2. (She'd paid him two thousand ($2,000.00) dollars November 1974) Hausheer "lost" motions for x-rays April 1, 1975; he left suits.

a. Second dental claim filed 1975

The Complaint for relief in Case 2, appeal 77-1557, Taylor v. Carnes, D.D.S., for four hundred thousand ($400,000.00) dollars after dental injury, was filed March 13, 1975 in Topeka, Kansas federal court by Attorney Hausheer, who then "lost" x-ray motions in Case 1, and left suits, April 4, 1975. Plaintiff was California resident, with diversity of citizenship from Kansas dentist.

Plaintiff completed first law courses June 1975. The Tenth Circuit opinion holds as presumed "error" plaintiff's prosecution of her suit from April 1975 to January 1977, but plaintiff's 1976 interrogatories were admitted relevant by four dentists; her work termed "salient" by Kansas Bar members.

i. Plaintiff's two suits 1975-1977

From June 1975 to 1977, plaintiff was massively maimed, by daily, intense, continual harm. The crime was linked to this litigation by three investigators, Kansas, Missouri, California. Plaintiff, woman alone, was vulnerable to criminal abuse by electronics, a common crime in 1970's, to burn away body tissue and bone by radiation devices of construction, other trades.

July and August 1975, plaintiff moved for continuances, by injury and crime, in legal naivité. In May, dentists' attorney did not reply to her two requests by letter for dental x-rays ordered by the court, to show dental insuror's bad faith. All dentists share common insuror, Medical Protective.

Plaintiff informed District Judge Rogers of intense criminal injury, harm for her, linked to litigation by investigators; 1975 witness intimidation of one, Ornelas by robberies of home; his children's possessions and injury for his wife. Rogers, former insurance lawyer for dentists, did not act for plaintiff's safety, from crime.

December 1975, District Judge Rogers, dismissed Case 1, after full order compliance by plaintiff to file witness and exhibits lists to prevent dismissal. Plaintiff reinstated suit March 29, 1976.

March to December 1976, Magistrate Sullivant, another insurance lawyer new to bench, acted for Rogers. In bias, Magistrate refused plaintiff her legal proofs by order terms contrary to law in Kansas, as dental laboratories do not act for other than dentists. Magistrate did not reply to plaintiff letters of this order restriction. Dentists did not produce ordered legal proofs.

Plaintiff filed twenty-four (24) motions with legal arguments from June to December 1976. Magistrate denied all. Plaintiff prosecuted by motions to produce, compel all legal proofs; have dental university evaluate veracity; obtain insurance policies of each dentist; change venue to Kansas City, Kansas, site of two tortfeasers' acts; re-open discovery; answer dentists' three motions; and filed two motions for summary judgments after fraud on courts by dentist attorney and client, Carnes herein.

Enterin district judge overruled all twenty-four (24) motions January 10,1977.

In February, June, September 1976, plaintiff sent lengthy thousand and fifty (1,500) pages of interrogatories, admitted relevant by four dentists, yet judges denied plaintiff efforts relevant to adversary dentists and issues of two dental claims.

District Judge Rogers recused November 22, 1976, after he refused to review Magistrate orders. Plaintiff affidavit asked Rogers' recusal, as former insurance lawyer for dentists.

District Judge Templar entered, as his letter December 26, 1976 informed plaintiff in her California home. Judge set Case 1 trial date for January 10, 1977, with Case 2. Plaintiff's phone call for continuance, by discovery refused her and injury, met judicial hostility. Plaintiff used public law libraries to compose motions to continue trial dates; and went to Kansas for January 10, 1977 oral hearing.

January 10, 1977 hearing had sham, lack of judicial decorum. District Judge Templar denied plaintiff's twenty-four (24) motions for rightful discovery in dental claims; denied fifteen hundred (1,500) pages of interrogatories admitted relevant by four dentists. Judge laughed at plaintiff charges of Kansas lawyer Stratton's known frauds on court and lawyer's fraudulent motion and use of known-perjured affidavit of client dentist Carnes.

Judge Templar order, January 12, 1977 granted federal rules of civil procedure Rule 56(b) motion to defendants, and stated in error: "no issues of material fact exist" yet record had words of dentists Perguea, Swartzwelter and Carnes to cite malpractice by defendants. Record had head x-rays of woman's dental injury, res ipsa loquitur proof of fractured jaws, with bone removed, bone loss, roots drilled away, and teeth stumps in gross iatrogenic malocclusion, crowns missing, a classic openbite deformity. The woman before the judge was facially paralyzed from expression, and only three lower jaw crowns remained, crooked; mouth ajar.

Judge Templar order, January 12, 1977 erred to state "(plaintiff's) failure to prosecute" when judge had just denied her twenty-four (24) motions filed in past six months, work admitted relevant to issues by dentists adversaries.

In January 1977 Kansas blizzards, plaintiff hired president of Kansas City Kansas Bar law firm. February 9, 1977 Attorney Tom Sullivan for Chambers-Dykes entered for plaintiff. Attorney pled, with exhibits, in oral hearing April 25, 1977:

a. California dentist-attorney Normnn Ascherman D.D.S.-J.D. would witness for plaintiff. He examined her in 1974 and wrote, in Exhibit 1: "..her claim has merit.."
b. Kansas dentists of medical-dental schools would evaluate x-rays: Ralph Johnson, D.D.S. and Hugh Bruner Jr, D.D.S.-Perio., Kansas dental school.
c. California physician-internist James Privitera, M.D. offer to witness 1976-7"radiation toxicities"for woman, "harm to bone, blood, thyroid, scalp."

d. Investigator Sonnenberg offered witness to 1976-7 criminal injury to harm woman. Two other investigators verified harm too.
e. Attorney pleading termed plaintiff's 1976 pleading and interrogatories as "salient", to Kansas Bar member.
f. Attorney pleading cited judicial errors existed, to refuse discovery to woman.
g. Attorney informed a respected Kansas law firm would take woman's suits to trial.

On May 9, 1977, Judge Templar denied plaintiff attorney's Rule 59 and 60(b)1 and 6 motions. June 28, 1977, Judge Templar denied plaintiff's motion for reconsideration.

In July 1977, recused Judge Rogers re-entered suits, ordered plaintiff pay one thousand, eight hundred ($1,800.00) to appeal two dental claims. Tenth Circuit overruled him.

On August 8, 1977, Judge Templar denied plaintiff's Rule 60(b)3 motion submitted in May, 1977 to charge and prove dentists' attorney's continued frauds on court, by exhibits April 1977.

In April 26, 1977, dentists' attorney filed Journal Entry of January 12, 1977, citing plaintiff's dismissal for delay. after defendants' four-month delay.

Appeal to Tenth Circuit Court of Appeals was perfected by plaintiff; and both parties filed memorandum briefs, with no oral argument to Tenth Circuit.

July 1978, six months later, plaintiff wrote for ruling by Tenth Circuit Court.

On July 17, 1978, after six months, a three-man Tenth Circuit Court of Appeals affirmed district denial of plaintiff's Rule 59, and 60(b)1,3,6 motions of summary judgment for dentists despite dentist-attorney witness for plaintiff that "her claim has merit".

The July 17, 1978 Slip Opinion was "NOT TO BE ROUTINELY PUBLISHED", as dicta.

On September 11, 1978, the same men treated plaintiff's Rule 40 (Appellate) Petition for Rehearing as Recall of Mandate, denying it.

From that opinion, plaintiff files this writ for certioari, and asks remand to district for discovery and trial in two dental claims of national case law.

REASON FOR GRANTING THIS WRIT

1. These two dental claims for one million, two hundred thousand ($1,200,000.00) dollars are national precedent suits for higher care standards of the occlusion and jaw relation to skull. Public moment exists, for all persons injured, and, as here affecting court change, access, as aid to simplified legalities in health markets.

As a matter of law, error exists when a dismissal for "failure to prosecute" comes six months after petitioner filed twenty-four (24) logical motions, with legal argument, to acquire legal proofs and change venue; The lengthy interrogatories were admitted relevant by four dentists, yet not ordered by the court. The court has inherent power to dismiss, as in Link, infra, but current 5th Circuit refusal to permit such dismissals, with sharply-defined discipline, or error, speak to a growing judicial responsiveness and responsibility to more sophisticated public needs. Flaksa, infra, speaks to the softer judicial stands, more practical for a changing public. Lesser sanctions, rather than abrupt disregard for plaintiff's financial bankruptcy in known health markets, are a public policy.

2. Public moment to affect all lawyers, and Kansas lawyers, is herein, to rule, reverse and remand with instructions, on motions to deal with frauds on the courts, in this suit.

A known-fraudulent motion by attorney was filed, with his client's known-perjured affidavit, to claim plaintiff had "stolen all legal proofs in 1973" for dental claims of a million ($1,000,000.00) dollars, when proofs existed of the possession of these proofs with dentist and lawyer at all times. If open fraud is permitted on the courts today, the loss of court integrity is obvious, as in Hazel, infra.

3. As a matter of law, a summary judgment entered in this suit to favor dentists has had clear issues of material fact to preclude summary judgment in a dental malpractice suit, in the known Sartor, infra., and 10th Circuit standards of Bushman, infra; Jones, infra; James, infra.

4. The Tenth Circuit has ignored a weighting and sifting of evidence on the district level, in procedural stance of the judge, usurping a jury function, as in Sartor, infra.

5. The plaintiff is financially, drained, and much indebted, despite past life comfort. Crime after this suit has further injured her health, in massive maiming, to make her face and head unrecognizable. Investigator and medical opinion support her claims; and ask writ, as in Schulz, infra.

6. The plaintiff still has Bar and witness support, if suits are reinstated, to void a personal bankruptcy, and to ask the suits of national case law to for forward, in the interests of justice., if a writ and reversal emerge,

1. IS IT THE FUNCTION OF THE COURT OF APPEALS TO AFFIRM DISTRICT DISCRETION, AFTER DISMISSAL FOR "FAILURE TO PROSECUTE" WHEN, IN LAST SIX (6) MONTHS BEFORE DISMISSAL, PLAINTIFF PLACED IN COURT RECORD TWENTY FOUR (24) MOTIONS, TO PRODUCE AND COMPEL ALL LEGAL PROOFS FROM FOUR DENTISTS AND TWO SUITS, WITH UNIVERSITY EVALUATION FOR PROOFS: MOTIONED VENUE CHANGE TO KANSAS CITY, KANSAS, SITE OF TWO TORTFEASER ACTS: PLACED FIFTEEN HUNDRED (1,500) PAGES OF INTERROGATORIES ADMITTED RELEVANT BY FOUR DENTISTS: TWO MOTIONS FOR SUMMARY JUDGMENTS: AND ANSWERS TO DEFENDANTS' MOTIONS? WAS DISTRICT DISCRETION UNBIASED?

The court has inherent power to dismiss for lack of prosecution, a harsh sanction, see Link v. Wabash, R.R. Co. (1962) 370 U.S.676, 633-634 and n.10, 82 S.Ct 1340. Discretion is measured by number of lesser sanctions applied. as each suit varies, as Case 1 was twenty-seven (27) months old, with seventeen (17) motions or more filed; Case 2 was hirteen months old, with eight (8) motions filed. Now the Fifth Circuit takes the view that dismissal with prejudice is too harsh, an abuse of discretion, absent show of intentional misconduct by plaintiff or counsel; and reason for reversal herein, as in Boazman v. Economics Laboratory Inc. (C.A.5th, 1976), 537 F.2d 210. Link, supra, assails a plaintiff for lawyer choice when legal incompetency and fraud result, as in these suits, and for others. Flaksa v. Little River Marine Constr.

Co. (1969,C.A.5 Fl) 389 F.2d 885, cert. den. 392 U.S.928, 20 L.Ed.2d 1837, 88 S.Ct 2287 recognizes power of final disposition of litigation as sanction, in harshness, and found court to soften views unless contumacious conduct occurs. by clients, participants in court. This suit is crux for reversal, as matter of law, herein. Lyford v. Carter (1960) CA2NY) 274 F2d 815 suggests range of lesser sanctions. This view is repeated by Dyotherm Corp. v. Turbo Machine Co. (1968, CA3 Pa) 392 F2d 146, to find other circuits not in accordance with sanctions to bar litigant from rightful trial, as herein. As "failure to prosecute" is not based on settled rules, abuse is nebulous, as in J Moore, Federal Practice # 41-13 at 1125; Wright & Miller, 9 Federal Practice & Procedures # 41.11(2) at 1119. Review assesses relevant circumstanaces within bounds of judicial discretion for abuse. Narvarro v. Chief of Police, Des Moines, Iowa, 523 F.2d 211 was reversed for abuse. A local rule monitors some abuse, as in University of Chicago L.R. V.34, 922, 1974. Defendant conduct is irrelevant unless he affirmiatively contributes to delay, as herein, and Heidman v. Kelsey, 3 Ill.App.2d, 189, 121 N.E. 2d 45, (1951). The sanction, herein, is error, with twenty-four motions of admitted-relevant quality by plaintiff, in the last six (6) months before dismissal.

Glo-Co, Infra, with terms unknown, was remanded; herein, a rightful need also exists for this. Dismissal for want of prosecution when discovery blocked by constrained orders from magistrate, refusals by dentists and final sanctions is manifest injustice, after known professional legal work by propria persona, in some naivité. Glo-Co, v Murchison and Company (C.A. 3d 1967) 397 F.2d 928 exemplifies wide judicial view, to find equities in contract debt.

2. IS IT FUNCTION OF THE COURT OF APPEALS TO REMAND TO DISTRICT WHEN PLAINTIFF'S SUMMARY JUDGMENT MOTIONS WERE NOT ANSWERED BY DENTISTS' ATTORNEY: AND PLAINTIFF MOTIONS CHARGED AND PROVED ATTORNEY'S KNOWN FRAUDS ON COURT: HIS USE OF KNOWN-FRAUDULENT MOTION ON COURT BASED ON KNOWN-PERJURED AFFIDAVIT OF HIS CLIENT, DENTIST CARNES WHO, AFTER MONTHS OF LITIGATION, SUDDENLY SWORE "PLAINTIFF IN 1973 'STOLE' ALL LEGAL PROOFS" OF TWO DENTAL CLAIMS FOR ONE MILLION, TWO HUNDRED THOUSAND ($1,200,000.00) DOLLARS? WAS DISTRICT WITHIN DISCRETION?

The power to vacate a judgment obtained by fraud upon the court, is inherent in the courts, as in Universal Oil Products Co. v. Root Ref. Co., 1946. 66 S.Ct.1176,1179, 328 U.S. 575,580, 90 L.Ed. 1447; Mallonee v. Grow, Alaska (1972), 502 P.2432,436, citing Barron & Holtzoff (Wright ed.); and Hazel-Atlas Glass Company v. Hartford Empire Company, 64 S.Ct. at 1003-1004, 322 U.S. at 250-251, 88 L.Ed. 1250. In Hazel-Atlas, supra, an attorney, officer of court, set out to deliberately mislead court by publishing an article under another name. In dental suits herein, Attorney Stratton filed November 13, 1976, a known-fraudulent motion in Case 2, as "motion to produce record from plaintiff.."based on" known-perjured affidavit by client dentist Carnes who swore "plaintiff in 1973 forcibly removed x-rays, casts, notes, papers" from him. Petitioner in December 1976 summary judgment motions proved the attorney's known fraud on court and use of known-perjured affidavit by dentist by exhibits as Stratton's April 16,1975 letter to "list and enclose" x-rays,

and all legal proofs of affidavit; dentist Carnes' February 28, 1974 letter to J. Levy, Attorney, to sell copies of these x-rays and legal proofs for one thousand ($1,000.00) dollars, as witness; and other proofs of this attorney's 1976 known fraud on the courts, and plaintiff. In these suits, this court has inherent power to inquire into integrity of judgment and set aside when fraud of its officers shown, as herein, and in Chicago Title and Trust Co. v. Fox Theatres, D.C.N.Y. (1960), 182 F.Supp.18,38. A spirit of the law, "fraud on the court" rule is applicable whenever the integrity of the judicial process or functioning has been undercut, as Greater Boston Television Corp. v. F.C.C., (C.A.1971), 463 F.2d 268,278, 149 U.S.App.D.C. 322.

Almost all principles governing claims of fraud on the court derive from Hazel-Atlas, supra., as Justice Black held judgment must be vacated, after deliberate scheme to defraud 3d Circuit, and Patent Office. Herein, the 10th Circuit and plaintiff woman, as "class" of women plaintiffs alone before the courts in social and cultural inequities. A party may inform the court and court proceed on its own motion to determine fraud, as in Universal, supra. Conduct complained of must be fully proved, by movant in convincing evidence, as in Suenz v. Kenedy, 178 F.2d 417,419 (5th Cir. 194); Gilmore v. Strascom Industries Inc., 166 F.R.D. 146, 153 E.D.PA 1975, aff'd without opinion,

The Restatement cites Hazel-Atlas, supra and Sutter v. Easterly, 354 Mo 282, 189 S.W.2d 284 (1945) holding it fraud upon the court if attorney suborns

affidavit of his client dentist Carnes herein. If fraud this open is allowed in Kansas federal court, integrity is smudged, to laughable, ugly slyness and sham. Hazel-Atlas, Infra, Universal, infra, Mallonee, infra, Chicago Title, infra, and Greater Boston, infra, speak to this issue of an officer of the court in open fraud and use of known perjured affidavit to involve material issues, legal proofs of one million, two hundred thousand ($1,200,000.00) dollars dental claims for a woman alone.

A powerful dimension enters when an officer of the court sullies the system, as in Parker, infra, Peacock Records, infra, and the power of the court must speak to this issue, or attorney acts go unimpeded, in sham, falsity, "white-collar crime taken for granted."

3. A Kansas judge, in rare lapse, has allowed issues of fact to remain in summary judgment motions. If unfairness to one person is not implicit to a highest court, why did the system fail in this, to allow needless inequities, and peer reluctance, failure to recognize the rights of each petitioner? Sartor, infra, speaks, as countless suits to scrupulously regard individual rights of each plaintiff. The Tenth Circuit has not held to each former standard of strict adherance to Federal Civil Procedural Rules, to fail discretionary bounds, as in Jones, infra, and Bushman, infra, other suits of known summar standard.

material witness, or party herein as Carnes, to perjure testimony, A lawyer and litigant who engage in misconduct are not entitled to benefit on wrong inflicted on opponent, as in Minneapolis St. Paul & SS Marie Ry-co v. Hoquin (1931), 283 U.S. 520,521, 522, 51 S.Ct. 501,502, 75 L.Ed. 1243. A powerful distinction adds when attorney is party to fraud as "officer of court" in extransic fraud, as Hazel-Atlas, supra, Universal, supra, and Lockwood v. Bowles, D.C(1969), 46 F.R.D. 625,632, and Sutter, supra. A public moment here to affirm district orders and appellate allows all Kansas lawyers to openly confer with clients to place known-fraudulent motions and known-perjured affidavits to "lose" the legal proofs of malpractice suits in health markets, fifteen months after suit filed, and is contrary to Hazel-Atlas.

"Truth is more important than the trouble to get it", in Justice Brenman words are court aims to uncover frauds upon the courts, as in Publicker v. Shalcross (C.C.A.3d, 1939), 106 F.2d 949,952. The power to vacate judgment is underlying power to maintain discretionary bounds, if judiciary fails to rise to any show of fraud on the court, and refuses relief to moving party, as Moore & Rogers, Federal Relief from Civil Judgments, 1946, 55 Yale L.J. 692,n.266. An abuse occurred in failure to vacate judgment in Parker v. Checker Taxi Co., (C.A.7th, 1956) 238 F.2d 241, cert.den. 77 S.Ct 681, 353 U.S. 922, 1 L.Ed.2d 719. Abuse came, in failure to vacate after fraudulent practices and perjured testimony as in Peacock Records Inc. v.

Checker Records, Inc. (C.A.7th, 1966) 365 F.2d 241, cert.den. 87 S.Ct. 707, 385 U.S. 1003, 17 L.Ed.2d. 542.

District Judge Templar had duty to inquire into fraud on the court by Kansas Attorney Stratton and defendant Carnes when those charges of fraud were made by petitioner in her December 1976 summary judgment motions; and undenied by dentist and attorney, thus admitted frauds on the court by them. The district did not do this, but dismissed petitioners' suits, in decorum of laughter and amusement at the lawyer's frauds on court, within January 10, 1977 oral hearing, Topeka, Kansas. A public moment exists, to recognize the legal rights of all individuals wronged by discretionary failures and allowance of Kansas lawyers' frauds and use of known-perjured affidavits of clients, as dentists and others, as in Hazel, if limited to such largess, as in Rule 60(b); Survey and Proposal for General Reform, 60 Cal.L.R. 531, at 554,n.166, A party fraud is held extrinsic, perjury; as it "impinged directly upon the administration of justice", as in Publicker, supra.

"Fraud upon the court" is "fraud perpetrated by officers of the court so that judicial machinery can not perform in usual manner its impartial task,..", as in 7 Moore ¶ 60.31-33, quoted in 48 Iowa L.Rev 398,445-46. That fraud upon court occurred in these dental suits, and requires motion to vacate judgment, as in Hazel-Atlas, supra, and Universal, supra.

3. IS IT FUNCTION OF THE COURT OF APPEALS TO AFFIRM DISTRICT DISCRETION TO MAINTAIN BY JANUARY 10, 1977 ORDER WORDS: "..NO ISSUES OF MATERIAL FACT EXIST.." WHEN PRESIDENT OF KANSAS CITY, KANSAS BAR LAW FIRM FOR PLAINTIFF, PRAISES HER WORK AS "SALIENT" AND PLACES ON COURT RECORD LETTER BY DENTIST-ATTORNEY NORMAN ASCHERMAN, D.D.S.-J.D., TO WITNESS FOR PLAINTIFF, AS "..HER CLAIM HAS MERIT..": AND RECORD HAS HEAD X-RAYS, AS RES IPSA LOQUITUR DENTAL INJURY BY BROKEN, MUTILATED JAWS, WITH PARTS REMOVED AND TOOTH REMAINS IN GROSS MALOCCLUSION OF DENTAL CROWNS AND CUTS: AND RECORD HAD WORDS OF THREE DENTISTS TO CITE MALPRACTICE HEREIN? DID DISTRICT MAINTAIN DISCRETION?

In Journal Entry filed April 26, 1977 by dentists, for order January 10, 1 10, 1977 by District Judge Templar, are the words, that "no issues of material fact exist" as terms of summary judgment for dentists herein. The May 9, 1977 Order by Judge Templar is entitled: "Order denying Motion to Vacate Summary Judgement..." to note judicial posture of "summary judgment grant" to dentists. The Order words also state: "..the records demonstrate beyond doubt that she has no provable claim against the defendants.." yet Judge Templar had seen firm offer to witness for plaintiff, letter by Norman Ascherman, D.D.S.-J.D., San Francisco, dentist-attorney who wrote; "..Her claim has merit..", in oral testimony, pleading of plaintiff's attorney Sullivan, and letter by dentist-attorney as Exhibit "1", for plaintiff. Thus judicial error occurred, affirmed obtusely by the Tenth Circuit Court of Appeals.

In Sartor v. Arkansas Natural Gas Corp., (1944), 321 U.S. 620, 627, 628-9, 64 S.Ct.724, 88 L.Ed.967, 7 F.R.Serv. 56c41, Case 14, Justice Jackson noted "summary judgment only where moving party entitled, where it is quite clear what the truth is, that no genuine issue remains for trial..", yet dental suits herein did not have those conditions. Record had dentist Swartzwelter write of severe occlusal injury.."in no way resembles what Mother Nature intended, by temporary crowns of the lower jaw.." by Meigs Jones, defendant. Record had dentist Carnes letters to plaintiff's attorneys, to state "massive reudction of teeth", a dental faulth; and "she has been overtreated." Record had dentist Pergeau's letter to attorney to state "bone loss" when defendant Carnes did not inform, a legal factor in dental care. Record had dentist-attorney Norman Ascherman witness for plaintiff, his letter for court, Exhibit 1, to state: "..her claim has merit.." Head x-ray copies for plaintiff were classic open-bite deformity, an iatrogenic injury, res ipsa loquitur.

The Tenth Circuit has known standards of summary judgments in discretionary bounds, as factual inferences tending to show triable issues in favorable stance. Pleadings and documents are construed liberally to favor party opposing action, as Harmon V. Diversified Medical Investments, Corp., 488 F.2d 111 (10 Cir., 1973), Shawver & Son, Inc. v. Oklahoma

Gas & Electric Company, 463 F.2d 204 (10th Cir. 1972). Movant must show entitlement beyond reasonable doubt. and if inference can be deduced from facts whereby non-movant might recover, summary judgment is not appropriate, as in Dzenits, supra; and James, supra. Judgment is not substitute for trial by affidavits, as Bushman Construction Co. v. Conner, 307 F.2d 888 (1962); and Champlin v. Oklahoma Furniture Manufacturing Company, (10th Cir. 1959), 269 F.R2d.) and Jones v Nelson, (10 Cir, 1973), 484 F.2d 1165. Inference and fact disputes were in suits herein. This decision was not in accordance with Tenth Circuit decisions and those of other Circuits.

Dictum in Supreme Court opinion, Wilkerson v. McCarthy, 336 U.S.53,57 (1949) would limit court's consider only opposing party evidence in judgments, as in 83 Yale L.J.745, 1974, to show liberality in prevention of abuse, by summary judgments.

A judge may not weight evidence, as in Sartor, supra; Halliday v. United States, 315 U.S. 94,97, 62 S.Ct.438,440, 86 L.Ed.711; yet Judge Templar's order May 9, 1977 reads: "..she has no provable case.." to err, in weighting evidence, when dentist-attorney Ascherman states "..her claim has merit.."

4. IS IT FUNCTION OF THE COURT OF APPEALS TO MAINTAIN SUMMARY JUDGMENT FOR DENTISTS, WITHIN DISCRETION, TO WEIGH AND SIFT EVIDENCE IN JUDICIAL WORDS OF MAY 9, 1977 ORDER THAT "..PLAINTIFF HAS NO PROVABLE CASE.." AFTER PLAINTIFF"S DENTIST-ATTORNEY ASCHERMAN WITNESS FOR HER, HIS WRITTEN WORDS ON COURT RECORD: "..HER CLAIM HAS MERIT..."? DID DISTRICT DISCRETION REMAIN?

The Tenth Circuit has firm standards for use of summary judgments, as in Bushman, supra, James v. Honaker Drilling, Inc., 10 Cir, 234 F.2d 702, Sartor, supra, and Champlin, to keep strict impartiality for trier of fact, and disallow summary judgment motions if any doubt exists that no issues are here, to preclude judgment, by Federal Rules of Civil Procedure Rules 56, 60(b). In Order May 9, 1977, Judge Templar refers to dentist Jones by first name, as if friends. Appeals judges Seth, Barrett try circuit cases with District Judge Templar, as peers, a difficulty in ruling, often, to result in "Not to be published routinely" opinions, as herein.

5. IS IT FUNCTION OF THE COURT OF APPEALS, IN TIME OF CATASTROPHIC HEALTH COSTS, TO BANKRUPT PLAINTIFF WOMAN ALONE, INDEBT HER THIRTY-THOUSAND ($30,000.00) DOLLARS TO DOUBLE, TO REGAIN PARTIAL HEALTH: AND TO PAY DENTISTS' SUIT COSTS HEREIN, AFTER THEIR FRAUDS ARE ON THE COURT? IS THIS DISCRETION?

In Schulz v. Pennsylvania Railroad Co., 350 U.S. 523, 76 S.Ct 608 (1956), humane decency allowed court grant certiorari to aid financial plight of injured man, after great injury, as here.

when plaintiff charged and proved frauds on court with material issue, proofs of one million, two hundred thousand ($1,200,000.00) dental claims, amount plaintiff motion asked, for dentists' frauds on Kansas Court, 1976.

6. IS IT FUNCTION OF THE COURT OF APPELAS, TO APPROVE DISTRICT DISCRETION, AS MATTER OF LAW, IN REFUSAL TO VACATE JUDGMENT FOR DENTISTS IN "SUMMARY JUDGMENT"(albiet DENTAL WITNESS FOR PLAINTIFF) AND DISMISSAL FOR "FAILURE TO PROSECUTE" WITH TWENTY-FOUR MOTIONS OF WORTH IN PAST SIX (6) MONTHS BEFORE DISMISSAL, DESPITE DENTAL INJURY, RADIATION TOXICITIES BY MEDICAL AUTHORITY OPINION FOR HER: AND FOUR (4) INVESTIGATORS" REPORTS OF CRIMINAL ACTIVITY TO MAIM THE PLAINTIFF?

Federal Rules of Civil Procedure Rule 60(b)6 is term of largess, of "other" reasons to vacate judgments herein, as in Glo-Co, supra and United States v. Klapprott (D.NJ 1949) 9 F.R.D. 282, C.A.3d, 1950) 188 F2d 474, cert.den. (1950) 344 U.S. 188 896, 71 S.Ct 238, 90 L.Ed. 649., a parallel for the "unusual" aspect of the case, and the backgrounds of the two people, both in bizarre, unusual circumstances. For plaintiff herein, years of mutilation, abuse by crime to largely destroy her face, head, eyes and mouth, to figure in dental suits and personal, social and employment, . lifetime, now maimed.

For reasons above, petitioner asks reversal and remand to district, with instructions on the summary judgment motions by plaintiff December 1976

Signed: Joan Taylor propria persona
455 Smith Irving Blvd
Los Angeles Ca 90020

Federal Rules of Civil Procedure

Rule 60(b)(1)(3)(6)

RULE 60. Relief from Judgment or Order

(b) Mistakes: Inadvertance; Excusable Neglect: Newly Discovered Evidence: Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertance, surprise, or excusable neglect; ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1)..(3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect finality of a judgment or suspend its operation. This rule does not limit the power of the court to entertain an independant action to relieve a party from a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C.# 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedu for obtaining relief from a judgment shall be by motion as prescribed in these rules or by an independent action.
As amended December 27, eff.March 19, 1948; December 29, 1948, eff.October 20, 1949.

ORDERS AND EXHIBITS

Circuit:

"A"

July 17, 1978. Slip Opinion, Not to Be Routinely Published

"B"

September 11, 1978. Opinion, to deny plaintiff writ of mandate

District:

"C"

January 10, 1977 Order, Journal Entry(s) filed April 26, 1977 by dentists

"D"

May 9, 1977 Order to deny motion to vacate summary judgment by Rule 60(b)(1) and Order of Dismissal by Vule 59, to Attorney Sullivan for plaintiff

"E"

June 28, 1977 Order to deny reconsideration to plaintiff

"F"

August 8, 1977 Order, to deny plaintiff's motion(s) to vacate, by Rule 60(b)(3)

(Continued, next page)

UNITED STATES COURT OF APPEALS

For the Tenth Circuit

SLIP OPINION

NOT FOR ROUTINE PUBLICATION

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JOAN E. TAYLOR, Plaintiff-Appellant, vs. JOHN C. CARNES, D.D.S., Defendant-Appelle.	NO. 77-1557
JOAN E. TAYLOR, Plaintiff-Appellant, vs. EDWARD C. SIMMONS, D.D.S., MEIGS JONES, D.D.S., MEIGS JONES JR, D.D.S., Defendants-Appellees	NO. 77-1558

Appeal from the United States District Court
For the District of Kansas
(D.C. NOS. 75-45-C5; T-5414)

Appellant Taylor filed pro se memorandum opposing summary action. Wayne T. Stratton, Esq., filed memorandum in support of summary action on behalf of appellees.

Before Honorable Oliver Seth, Honorable James E. Barrett, and Honorable James K. Logan, Circuit Judges, United States Court of Appeals

PER CURIAM

These appeals are from orders of the United States District Court for the District of Kansas dismissing appellant Taylor's dental malpractice claims. Federal jurisdiction was based on diversity of citizenship. Following years of problem-plagued proceedings, trial was ultimately set to commence on January 10, 1977. That same date Taylor filed a motion to continue trial from that date to a later date. The district court apparently conducted a hearing on January 10 and, as a result, denied the continuance and ordered that both actions be dismissed. The district court's identical orders of dismissal, filed April 26, 1977, found that there were no issues as to any material facts; the defendants were entitled to judgment as a matter of law; each action should be dismissed for failure to prosecute; and costs should be taxed to Taylor. The instant appeal

ultimately materialized following Taylor's unsuccessful efforts to revitalize the cases in the district court. Because we are convinced that the district court correctly dismissed the actions for failure to prosecute, we affirm, and see no need to consider the propriety of the district court's intentions regarding grant of the defendants' motions for summary judgment.

Rule 41(b) F.R.Civ.P., provides that a court may dismiss an action "(f)or failure of the plaintiff to prosecute or to comply with these rules or any order of the court . . ." Such dismissal is a drastic sanction to be applied only in extreme situations, Stanley v. Continental Oil Co., 536 F.2d 914 (10th Cir. 1976), but ". . is within the trial court's sound discretion and should be sustained absent an abuse of that discretion." Securities and Exchange Com'n v. Power Resources Corp., 495 F.2d 297 at 298 (10th Cir.1974). The procedural history of each case must be examined when determining whether a district court was justified in dismissing for failure to prosecute. Id. at 298.

77-1558, Taylor v. Simmons, et al

This action naming three defendants was filed on August 7, 1973. The complaint alleges that treatment of Taylor's teeth began on or about November 1, 1971, and, as a result of the dentist-defendants' negligence, Taylor has suffered permanent disability, disfigurement, pain and suffering. The attorney who filed this initial complaint on behalf of Taylor was dismissed on August 15, one week after the complaint was filed. The district court initially set December 18, 1973 as the date for Pre-trial conference but, on December 10, Taylor filed a motion

to continue that date for the purose of permitting her to retain counsel. During the next three years, the district court was met by a succession of attorneys, none of whom remained in Taylor's employ for an appreciable length of time, and motions and requests for continuances and extensions of time relating to pre-trial dates, trial dates and discovery. We think it significant that Taylor was without counsel from April 4, 1975 until after January 10, 1977, the date she moved for continuance of the January 10 trial date for the purpose of enabling her to retain another attorney. Even following the district court's January 10 determination to dismiss the action, Taylor's fourth and final attorney did not file an entry of appearance until February 9, 1977.

77-1557, Taylor v. Carnes

The complaint in 77-1557, naming a single defendant, was filed on March 13, 1975. The attorney who initially filed this case terminated representation of Taylor sometime prior to February 17, 1976, the date on which Taylor filed, pro se, a motion to continue the February 17 pre-trial date. The district court initially set November 30, 1976 as the trial date but, on November 22, 1976, Taylor moved for delay of that date. Trial date was reset for January 10, 1977, on which date Taylor filed pro se the already mentioned motion for continuance of trial. The outcome of that January 10 hearing has already been discussed.

Review of the procedural history of these cases convinces us that the district court had no choice but to dismiss pursuant to Rule 41(b). Taylor's numerous motions for delay, extensions and continuances almost

without exception were filed late or on date of the event she wished continued.

Upon docketing the parties were notified that these appeals were to be considered on the record of proceedings before the district court and without oral argument. Both have submitted a memorandum in support of their respective positions. Having reviewed these memoranda and the district court's orders of dismissal pursuant to Rule 41(b) are correct. In so concluding we are fully cognizant of Taylor's claims regarding harassment, failure of the defense to comply with discovery orders, and accusations regarding the veracity of affidavits submitted in support of the defendants' motions for summary judgment.

Affirmed.

AUGUST TERM - September 11, 1978

Before Honorable Oliver Seth, Honorable James E. Barrett, and Honorable James K. Logan, Circuit Judges, United States Court of Appeals

JOAN E. TAYLOR, Plaintiff-Appellant vs. JOHN C. CARNES, D.D.S., Defendant-Appellee.	77-1557
JOAN E. TAYLOR, Plaintiff-Appellant, vs. EDWARD C. SIMMONS, D.D.S., MEIGS JONES, D.D.S., MEIGS JONES, JR., D.D.S. Defendants-Appellees.	77-1558

This matter comes on for consideration of the petition for rehearing en banc of this court's opinion filed in the above case on July 19, 1978.

Upon consideration whereof, it is ordered: 1) the petition for rehearing be filed by the Clerk of this court; 2) the petition is treated as a motion to recall the mandate; and 3) because the petition presents no substantial matters not already thoroghly considered by the court, it be denied.

(signed) Howard K. Phillips
HOWARD K. PHILLIPS, Clerk

A true copy

Test()

Howard K. Phillips
Clerk, U.S. Court of
Appeals, Topeka Circuit

by (signed) Diane Combs
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOAN E. TAYLOR, Plaintiff,	
vs.	Civil Action
JOHN C. CARNES, D.D.S., Defendant.	No.75-45-C5

JOURNAL ENTRY

Now on this 10th day of January, 1977, the above matter comes on for disposition. Plaintiff appears in person and the defendant appears by Wayne T. Stratton, his attorney.

Thereupon the Court considers matters pending in the above action and hears arguments of the plaintiff and the defendant's counsel.

After hearing arguments of counsel and being advised with regard to the pleadings and the record before the Court, the Court finds:

1. That plaintiff's action against the defendant has been on file for a considerable length of time and the same has not been diligently prosecuted by the plaintiff.

2. The court has extended opportunities to the plaintiff to prosecute her action and no further delay in the disposition of the case should be countenanced.

3. That the pleadings, depositions, answers to interrogatories and affidavit on file show there is no genuine issue as to any material fact and that the defendant is entitled to a judgment as a matter of law.

4. That plaintiff's motions for delay in the trial date, for a hearing to reopen discovery, to compel answers to interrogatories or amendment to the order, and any other motions pending, should be overruled.

5. That plaintiff's action should be dismissed with prejudice for failure of the plaintiff to prosecute the same, and costs taxed to the plaintiff.

IT IS THEREFORE ORDERED that plaintiff's motions for delay in the trial date, for hearing to reopen discovery, to compel interrogatories or amendments to order, and any other motions pending are hereby overruled.

IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED that plaintiff's action be dismissed with prejudice, costs to be taxed to the plaintiff, and in addition and in the alternative,

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that defendants be granted judgment for his costs.

(signed) George Templar
Senior Judge assigned

U.S. DISTRICT COURT)
DISTRICT OF KANSAS) SS
I hereby certify that the foregoing is a true copy of the record on file in this court.
ARTHUR G. JOHNSON, Clerk
By R.C. Schneider (signed) Deputy
Dated: 7-8-77

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOAN E. TAYLOR, Plaintiff,	)	
	)	Civil Action
vs.	)	
	)	No. T-5414
EDWARD C. SIMMONS, D.D.S., MEIGS JONES, D.D.S., MEIGS JONES JR., D.D.S., Defendants.	)	

JOURNAL ENTRY

Now on this 10th day of January, 1977, the above matter comes on for disposition. Plaintiff appears in person and the defendants appear by Wayne T. Stratton, their attorney.

Thereupon the Court considers matters pending in the above action and hears arguments of the plaintiff and the defendants' counsel.

After hearing arguments of counsel and being advised with regard to the pleadings and the record before the Court, the Court finds:

1. That plaintiff's action against the defendants has been on file for a considerable length of time and the same has not been diligently prosecuted by the plaintiff.

2. The court has extended opportunities to the plaintiff to prosecute her action and no further delay in the disposition of the case should be countenanced.

3. That the pleadings, depositions, answers to interrogatories and affidavit on file show there is no genuine issue as to any material fact and that the defendants are entitled to a judgment as a matter of law.

4. That plaintiff's motions for delay in the trial date, for a hearing to reopen discovery, to compel answers to interrogatories or amendment to the order, and any other motions pending, should be overruled.

5. That plaintiff's action should be

dismissed with prejudice for failure of the plaintiff to prosecute the same, and costs taxed to the plaintiff.

IT IS THEREFORE ORDERED that plaintiff's motions for delay in the trial date, for hearing to reopen discovery, to compel interrogatories or amendments to order, and any other motions pending are hereby overruled.

IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED that plaintiff's action be dismissed with prejudice, costs to be taxed to the plaintiff, and in addition and in the alternative,

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that defendant be granted judgment for his costs.

(signed) George Templar
Senior Judge assigned

U.S. DISTRICT COURT)
DISTRICT OF KANSAS) SS
I heareby certify that the foregoing is a true copy of the record on file in this court.
ARTHUR G. JOHNSON, Clerk
By R.C. Schneider (signed) Deputy
Dated: 7-8-77

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOAN E. TAYLOR, Plaintiff,
vs.
EDWARD C. SIMMONS, D.D.S., S. HEIGS JONES, D.D.S., S. HEIGS JONES JR, D.D.S., Defendants.
No. T-5414

JOAN E. TAYLOR, Plaintiff,
vs.
JOHN C. CARNES, D.D.S., Defendant.
No. 75-45-C5

ORDER DENYING MOTION TO VACATE SUMMARY JUDGMENT AND SET ASIDE ORDER OF DISMISSAL PURSUANT TO F.R.CIV.P. 60(b)(1) AND (6), AND MOTION TO VACATE SUMMARY JUDGMENT AND ORDER OF DISMISSAL UNDER F.R.CIV.P. 59

On January 10, 1977, these cases came on for trial pursuant to their assignment in Topeka, Kansas. The parties on that day appeared in person, plaintiff appearing pro se and defendants appearing with their counsel.

Plaintiff sought a continuance on the grounds that she was seeking to employ an attorney to represent her and because, as she contended, defendants had not made available to her all the materials to which she was entitled to have before proceeding to trial, and because she wanted to have further discovery.

The action against Simmons and Meigs, T-5414, was commenced August 7, 1973. The action against Carnes was commenced March 13, 1975.

These cases are related in that plaintiff charges malpractice on the part of dentists who treated her and whom she alleges conspired to harass and inflict serious radiation dosages on her from a source unknown and by methods unknown.

The history of the litigation is found in the order of Magistrate Sullivant, filed August 20, 1976, in Case No. T-5414 (Doc. 78) and need not be again related. Plaintiff has had the assistance of several very able trial attorneys and apparently was not satisfied with the services of any of them. The Court has been very responsive to plaintiff's demands for delay and has countenanced many delays and failures on her part to comply with its orders.

On the date assigned for trial, plaintiff was unable and unwilling to proceed with trial of either case and the Court, after reviewing the records in each of the cases, announced its order dismissing the actions for failure to prosecute with diligence, for summary judgment in favor of defendants, and refusing plaintiff's motions for further delay. This order was entered April 26, 1977.

The Court has carefully reviewed the motions, briefs and material submitted

by the attorney lately employed by plaintiff, The Court believes and finds that plaintiff has been afforded every reasonable opportunity to present her case, that she has failed to prosecute the actions, although many extensions of time and delays were granted to her, and that the records demonstrate beyond doubt that she has no provable claim against the defendants or any of them.

The motions to vacate the orders of dismissal in each of the cases and the motions to vacate and set aside the summary judgments are overruled and denied.

IT IS SO ORDERED this 9th day of May, 1977, at Topeka, Kansas.

(Signed) George Templar
Senior Judge, Assigned

FILED

May 9th, 1977

ARTHUR G. JOHNSON, Clerk

R.C.Sneider , Deputy
(Signed)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOAN E. TAYLOR, Plaintiff, vs. EDWARD C. SIMMONS, D.D.S., S. MEIGS JONES, D.D.S., S. MEIGS JONES JR, D.D.S. Defendants.	No. T-5414
JOAN E. TAYLOR, Plaintiff, vs. JOHN C. CARNES, D.D.S., Defendants.	No. 75-45-C5

ORDER DENYING MOTION FOR RECONSIDERATION

The above-styled matters come to the Court's attention upon the motion of plaintiff, Joan Taylor, in propria persona, to vacate summary judgments for the defendants in said actions.

The Court, after reviewing the files, pleadings and exhibits, finds and determines that said motions for

reconsideration filed herein by plaintiff, should be, and the same are hereby, denied.

IT IS SO ORDERED.

Dated at Topeka, Kansas this 28th day of June, 1977.

(Signed) George Templar
Senior Judge, Assigned

FILED

June 28, 1977

ARTHUR G. JOHNSON, Clerk

(Signed) Sharon Stark, Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOAN E. TAYLOR, Plaintiff, vs. EDWARD C. SIMMONS, D.D.S., S. MEIGS JONES, D.D.S., S. MEIGS JONES JR, D.D.S., Defendants.	No. T-5414
JOAN E. TAYLOR, Plaintiff, vs. JOHN C. CARNES, D.D.S., Defendant.	No. 75-45-C5

ORDER OVERRULING ALL PENDING MOTIONS

The Court has heretofore sustained motions of defendants to dismiss and for summary judgment and has denied all motions of the plaintiff for reconsideration of these rulings, and orders.

Plaintiff has now filed a motion to compel judicial orders on her pending motions and her request for relief from

orders based on F.R.Civ.P. 60(b)3.

Plaintiff has advised the Court that she waives oral hearings on these motions; therefore, the Court proceeds to consider the matter forthwith.

After reviewing the entire record and files in the case, the Court concludes that all pertinent motions have been considered and ruled upon. Nevertheless, so that no justiciable ruling by the Court may be omitted, it is now

ORDERED, ADJUDGED AND DECREED that all pending motions, and all matters of plaintiff not previously ruled upon, including plaintiff's request for relief from the Court's orders based on F.R.Civ.P. 60(b)3 are overruled and denied.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 8 day of August, 1977.

(Signed) George Templar
Senior Judge, Assigned

FILED

August 8, 1977

ARTHUR G. JOHNSON, Clerk

R.C.Schneider (Signed), Deputy

ORDERS AND EXHIBITS

"G"
November 13, 1976. Known-fraudulent motion on court by Kansas attorney Stratton for dentists, Case 2, to "motinn record from plaintiff"

"H"
November 13, 1976. Known-perjured affidavit with motion, by dentist John Carnes, to swear "..(Plaintiff) stole x-rays, all legal proofs in 1973 from me.."

"I"
April 14, 1976 letter by lawyer Stratton, to "list and enclose x-rays..and all legal proofs" claimed "stolen in 1973, two years earlier. Motion filed two years after letter to show possession of items by lawyer.

"J"
February 28, 1974 letter by dentist Carnes, to "sell for $1,000.00 x-rays, legal proofs he claims (in 1976) were "stolen frm me 1973" by plaintiff."

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOAN E. TAYLOR, Plaintiff,	)	Civil Action No. 75-45-C5
vs.	)	
JOHN C. CARNES, D.D.S., Defendant.	)	

MOTION FOR PRODUCTION OF RECORDS

Comes now the defendant and moves the Court for an order requiring plaintiff to produce certain records taken from defendant's possession by plaintiff as recited upon the Affidavit of John C. Carnes, D.D.S.

Such records were taken from the defendant's possession without his consent, and those records belonging to him should be returned forthwith; that those records prepared by other persons and owned by Joan Taylor

(EXHIBIT "G", page 1)

should be copied and copies made available to this defendant.

(Signed)
Wayne T. Stratton, of
GOODELL, CASEY, BRIMAN, COGSWELL
215 East Eighth Street
Topeka, Kansas 6603
(913) 233-0593
Attorneys for Defendant

CERTIFICATE OF SERVICE

Wayne T.Stratton certifies he caused to be placed in the United States mail, postage prepaid, on this 12th day of November, 1976, a copy of the foregoing Motion for Production of Records, addressed to Plaintiff, Joan E. Taylor, Gaylord Hotel,1006, 3355 Wilshire Blvd., Los Angeles, CAlifornia 90010.

(Signed)
Wayne T. Stratton, of
GOODELL, CASEY, BRIMAN, COGSWELL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOAN E. TAYLOR, Plaintiff,	)	Civil Action No. 75-45-C5
vs.	)	
JOHN C. CARNES, D.D.S., Defendant.	)	

AFFIDAVIT OF JOHN C. CARNES, D.D.S.

STATE OF KANSAS)
COUNTY OF SHAWNEE) ss:

JOHN C. CARNES, D.D.S., being duly sworn, deposes and states:

1. That he is the affiant above named and is the defendant in the above action.

2. That during the month of October, 1973, the plaintiff, Joan Taylor, removed from his possession copies of letters and x-rays taken by him; that in addition, plaintiff took other items which had been in the possession of

defendant for review, more particularly described as clinical notations, clinical observations, full mouth x-rays from Glen Thomas, D.D.S. notations of conversations with plaintiff, notations of defendant's response to plaintiff's questions, notations as to defendant's opinion as to patient's past and present condition, both dental and mental. That such records were taken without the permission of defendant.

Further the affiant sayeth naught.

(signed)
John C. Carnes, D.D.S.

Subscribed and sworn to before me this 11th day of November, 1976.

(seal) Arbella Fletcher (signed)
Notary Public

My appointment expires October 21, 1978.

(EXHIBIT "H", page 2)

The Law Offices of
GOODELL, CASEY, BRIMAN & COGSWELL
Two Fifteen East Eighth Street
Topeka, Kansas 66603
Area Code (913) 233 0593

Glenn D. Cogswell
Glenn L. Goodell
Wayne T. Stratton
Rodhl E Dhonds
Arthur E Palmer
Thomas E Wright
M. Philip Ellwood
Carl M. Anderson
Mangold S. Youngentos
Charles R. HayPatrick H. Salsbury

Lester H Goodell (1966)
Harlin S. Casey (1967)
Raymond Briman (1965)

William H. Hill
of counsel

Mr. Rene Hausheer
Hamilton & Hausheer
112 West Sixth Street
Topeka, Kansas 66603

RE: Taylor v. Simmons, et.al.

Dear Mr. Hausheer:

Enclosed please find all items that Dr. John Carnes wase requested to produce:

Included are the following:

(1) 22 x-ray films, copies by Robert Petereson, Stormont-Vail Hospital

(2) Dental casts, 6 models

(3) Photocopies of all letters to and from Joan Taylor and related correspondence to and fron others from February 1, 1973 to October 21, 1973.

(EXHIBIT "I", page 1)

(4) All dental records of Joan Taylor

(5) All payment form records to the plaintiff.

Very truly yours,

Wayne T. Stratton
Of GOODELL, CASEY, BRIMAN & COGSWELL

(EXHIBIT "I", page 2)

Dr. John Carnes,
Practice of Dentistry
1709 Medford
Topeka, Kansas 66604
Phone: 913 233 8416

Feb.28,1974

Mr. Jerry K. Levy,
Suite 201 Beacon Building
114 South Main
Wichita, Kansas 67202

Re: Joan E. Taylor

Dear Mr. Levy:

In reply to your letter of Feb.26, 1974, I must inform you that the correspondence by and between this office and Ms. Taylor exceeds 500 Grams in weight and many hundreds of pages. Since I have written to several attorneys on her behalf and have consulted with a number of dentists I feel that I have devoted sufficient time on her behalf without compensation. In her case, I have acted as consultant and on this basis our relationship has remained. I placed temporary covers for her, but no patient-doctor contract was ever entered.

Due to the great amount of time that it will require for me to personally photocopy these documents and letters I will have to make a charge of $1000.00 for this. I will not release this group of letters and documents to any other person therefore it will take me several days to copy these and to prepare a full narrative report.

(EXHIBIT "J", page 1)

Should you desire personal consultation my fee is $300.00 per day plus all expenses.

Should you desire other consultation, Dr. Ralph Johnson of Wichita has seen and talked with Ms. Taylor on a number of occasions and he can elaborate on his findings which I am certain are in agreement with mine. Too, Ms. Taylor consulted a dentist in Colorado and I had frequent conversations with him and I believe he will support my findings.

My letters to attorneys, Hecht of Topeka, and Mr. Foust explain my feelings that Ms. Taylor has been overtreated and I will not alter my opinion on this matter. It is most unfortunate that she has been treated in such a manner since in my opinion it has caused her extreme emotional distress as well as dental discomfort and great inconveince(sic) and expense. However, there is one point that I should clarify for you and that is that Ms. Taylor is demanding in her method of treatment and in my humble opinion she is not qualified either by training or experience to make dental diagnoses or treatment plans for a dentist to follow.

I shall cooperate with you fully, but as an attorney, you realize

that I too must be compensated for my time.

Yours truly,

(signed)

Dr. John C. Carnes

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOAN TAYLOR,)
) No.75-45-C5
Plaintiff,)
vs.)
)
JOHN CARNES, D.D.S.)
)
Defendant.)

AFFIDAVIT

STATE OF KANSAS)
COUNTY OF SHAWNEE) ss:
)

RENE HAUSHEER, being duly sworn, deposes and states:

1. That he is the affiant above named and was at one stage in the above proceedings counsel of record for the plaintiff, Joan Taylor.

2. That he received from defendant's attorney letters dated April 16, 1975, and April 22, 1975, copies of which are attached hereto, along with the enclosures referred to in said letters.

3. That all the material referred to in the attached letters were mailed by affiant's office to the plaintiff, Joan Taylor, as shown upon the attached receipt for certified mail.

Further the Affiant saith not.

(Signed)
Rene Hausheer

Subscribed and sworn to before me on this 22d day of March, 1976.

Arbella Fletcher (signed)
Notary Public

My appointment expires
October 21, 1978.

numerous phone calls from her and I have discussed her case with approximately six attorneys from Beverly Hills to Wichita, Kansas. On my last conversation with her I advised her that I would not reivew any of the documents and exhibits relating to her allegations of dental malpractice unless she sent me a retainer in the amount of $500.

I shall be most happy to cooperate with you in any manner, because I do feel her case has some merit. If you desire for me to return to Kansas, I will be more than happy to review the case and all the pertinent materials that are available. However, my fee for this type of consultation is $500 per day plus expenses.

If I can be of any help to you in this matter, please advise.

Sincerely,

N. R. Ascherman, D.D.S.-J.D.

NRA/lj

(EXHIBIT "L", page 2,
witness letter for plaintiff)

N. R. ASCHERMAN, D.D.S., J.D.

A Professional Corporation

February 28, 1977

ALCOA BUILDING, SUITE 1345
ONE MARITIME PLAZA
GOLDEN GATEWAY CENTER
SAN FRANCISCO, CALIFORNIA 94111
(415) 433 1970

Thomas Francis Sullivan, Esq.
McDonald, Chambers & Dykes
Cloverleaf Office Building 5
Suite 230
6701 West 64th St., Box 2033
Overland Park, Kansas 66201

Re: Joan Taylor

Dear Mr. Sullivan:

I am in receipt of your letter of February 22, 1977, regarding the above-captioned patient.

Please be advised that I saw this patient on March 31, 1974, at which time I made some study model impressions and listened to the patient's narrative complaints. During the interim from 1974 until the present time, I have received voluminous documents and paraphenalia relating to her dental problems. In addition, I have

(EXHIBIT "L", page 1)
- witness for plaintiff -

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 1978, copies of this Petition for Writ of Certiorari were mailed, postage prepaid to the following:

Attorney Wayne Stratton
Goodell Law Firm
315 East 8th Street
Topeka, Kansas 66603

Circuit Judges Seth, Barrett and Logan, U.S. Court of Appeals for the Tenth Circuit, 469 United States Courthouse, Denver, Colorado 80294

Judge George Templar
U.S. District Court
5th and Kansas, Postoffice,
Topeka, Kansas 66601

Joan Taylor, propria persona
455 South Irving Blvd.
Los Angeles, CA 90020
Phone 213 934 9377